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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203192
Party	Plaintiff Beats Electronics, LLC
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Date	09/08/2015
Attachments	Beats Electronics Opposition to Merkury's Motion to Compel the Deposition of Andre Young and for a Protective Order.pdf(29518 bytes) 9-8-15 Declaration of Bonnie Jarrett with Exhibit A-D.PDF(446231 bytes) Declaration of Andre Young.pdf(258624 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BEATS ELECTRONICS, LLC	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91203192
	)	
MERKURY INNOVATIONS, LLC	)	
	)	
Applicant.	)	

BEATS ELECTRONICS, LLC'S OPPOSITION TO
MERKURY INNOVATIONS, LLC'S MOTION TO COMPEL
THE DEPOSITION OF ANDRE YOUNG AND FOR A PROTECTIVE ORDER

Opposer, Beats Electronics, LLC ("Beats"), hereby opposes Merkury Innovations, LLC's ("Merkury") Motion to Compel the Deposition of Andre Young, dated June 18, 2015 ("Merkury's Brief" or "Merkury Br.") and respectfully requests that the Board issue a protective order preventing Mr. Young's deposition. Merkury's motion to compel the deposition of Mr. Young is plainly intended to harass Mr. Young and Beats as Mr. Young's testimony is irrelevant to this proceeding and unnecessarily duplicative.

Mr. Young, better known as Dr. Dre, is a co-founder of Beats, an executive at Apple Inc. ("Apple"), the founder and CEO of the record label Aftermath Entertainment, a Grammy-award winning rapper, an actor, and an entrepreneur. As an executive at three large companies and an artist, Mr. Young has many responsibilities and corresponding time commitments. Mr. Young's time is very valuable, and requiring him to prepare and sit for a deposition would be inappropriate because Merkury seeks irrelevant information that, in any case, it has already obtained through less intrusive means.

First, the testimony that Merkury seeks from Mr. Young is irrelevant to this proceeding. Specifically, Merkury asserts that it needs to depose Mr. Young about a single issue: Beats' "conception, creation and/or adoption of each of [Beats'] Marks." Merkury Br., at 1-2. But it is well-established that information regarding a senior user's creation of its mark is not relevant to the likelihood of confusion analysis. *Second*, contrary to Merkury's conclusory assertions, Beats nevertheless has already provided Merkury with the information it seeks from Mr. Young through a Rule 30(b)(6) deposition of a Beats marketing executive who is directly involved in the selection of BEATS-formative marks, as well as through written discovery. Furthermore, Merkury had the opportunity to depose Beats' Rule 30(b)(6) witness about the prosecution history of the first BEATS registration, including the assignment of that registration and its

attendant good will to Beats by a third party, and chose not to do so. Because any information that Mr. Young has is irrelevant and in any event has already been provided to Merkury, there is simply no need for Mr. Young to be deposed.

It is thus obvious that Merkury's only motivation for seeking to depose Mr. Young is to harass Mr. Young and Beats. Beats therefore respectfully requests that the Board deny Merkury's motion to compel and issue a protective order preventing Mr. Young's deposition.

I. MR. YOUNG'S TESTIMONY IS IRRELEVANT.

"The scope of discovery in Board proceedings . . . is generally narrower than in court proceedings," and discovery is limited to information that is relevant to a claim or defense. TBMP § 402.01. Merkury must "act reasonably in framing discovery requests" and cannot use the discovery process as a "fishing expedition[] . . . ." *Id.*; *see also Luehrmann v. Kwik Kopy Corp.,* 2 U.S.P.Q.2d 1303, 1305 (T.T.A.B. 1987) (noting that "each party and its attorney has a duty . . . to make a good faith effort to seek only such discovery as is proper and relevant to the specific issues involved in the case"). The Board may limit the extent of discovery otherwise allowed when (i) the discovery sought is cumulative or duplicative, or can be obtained from a more convenient, less burdensome, or less expensive source; (ii) the party seeking discovery has had ample opportunity to obtain information by discovery in the action; or (iii) the burden or expense outweighs its likely benefit considering, among other things, "the needs of the case[,] . . . the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." TBMP § 402.01.

Merkury claims that Mr. Young needs to be deposed about one issue: the creation, selection, and adoption of the BEATS family of marks. *See* Merkury Brief, at 1-2, 4-5. That information, however, is beyond the scope of discoverable information as it has no bearing on any of the claims or defenses in this proceeding. As the senior user of the now famous BEATS

family of marks, Beats' intent in and decision to adopt those marks is wholly irrelevant to the claims and defenses in this proceeding, namely whether a likelihood of confusion exists between Merkury's URBAN BEATZ mark and Beats' family of BEATS marks, and whether, as Merkury asserts, Beats' BEATS marks are merely descriptive for its goods and services. *See U.S. Polo Ass'n Inc. v. PRL USA Holdings Inc*., 101 U.S.P.Q.2d 1487, 1503 (S.D.N.Y. 2011) (in a likelihood of confusion analysis, the "only relevant intent is [the junior user's] intent to confuse") (quoting 4 MCCARTHY ON TRADEMARKS § 23.113 (4th ed.)); *Rockland Mortg. Corp. v. S'holders Funding Inc*., 30 U.S.P.Q.2d 1270, 1274-75 (D. Del. 1993) ("In classifying a mark [as fanciful, arbitrary, suggestive or descriptive] . . . it does not matter what motivated plaintiff's original principals when they chose plaintiff's mark. What matters is the impact of that mark on prospective consumers. . . ."); *Varian Assocs. v. Fairfield-Noble Corp*., 188 USPQ 581, 583 (T.T.A.B. 1975) ("applicant's [but not opposer's] adoption and selection of a mark involved in an opposition proceeding" is discoverable information); *Neville Chem. Co. v. Lubrizol Corp*., 183 U.S.P.Q. 184, 190 (T.T.A.B. 1974) ("opposer need not produce writings relating to selection of its pleaded trademark" because opposer's knowledge of any third parties' marks and decisions related thereto are irrelevant to applicant's position in a likelihood of confusion analysis, absent a showing that applicant is in privity with such party).[1]

Because Merkury seeks to depose Mr. Young about an irrelevant issue, its motion to compel should be denied and a protective order should issue. *See, e.g., Burns v. Bank of Am*., No. 03 Civ. 1685 (RMB) (JCF), 2007 WL 1589437, at *4 (S.D.N.Y. June 4, 2007) (denying motion to compel deposition of defendant's general counsel about an irrelevant issue).

[1] The cases on which Merkury relies are inapposite. Those cases stand for the unremarkable proposition that the strength of an opposer's mark is a factor in the Board's likelihood of confusion analysis. *See* Merkury Br., at 5-6. In none of those cases, however, did the Board rely on the evidence that Merkury seeks from Mr. Young, *i.e.,* evidence regarding the opposer's intent in selecting its mark, or the opposer's subjective view of the strength of its mark.

II. A DEPOSITION OF MR. YOUNG IS UNNECESSARY BECAUSE BEATS HAS ALREADY PROVIDED THE INFORMATION MERKURY SEEKS.

Merkury seeks to depose Mr. Young about Beats' "conception, creation and/or adoption of each of [its] Marks," and nothing else. *See* Merkury Br., at 1-2. While that issue is not even relevant, Merkury has nonetheless already obtained evidence on this very topic, namely a Rule 30(b)(6) deposition, document requests, and requests for admission.

A. Beats' Rule 30(b)(6) Deposition Witness Testified About the Conception, Creation and Adoption of the BEATS Marks.

Tyler Williamson, Beats' Senior Director for Global Sales and Channel Strategy, testified as one of Beats' two Rule 30(b)(6) witnesses. Among other things, Mr. Williamson testified on behalf of Beats about the conception, creation and adoption of the BEATS marks. *See* Declaration of Bonnie L. Jarrett, dated July 6, 2015 ("Jarrett Decl."), Ex. A, Williamson Dep. Tr., 21:20-22:1; *see also id.,* 9:10-21. Merkury never objected during the deposition that Mr. Williamson was an inappropriate witness or unprepared to testify on that topic. *See* Jarrett Decl., ¶ 5. In fact, Mr. Williamson testified that he has been "directly involved" in the selection of the BEATS marks for several years, and thus has personal knowledge about that issue. *See* Jarrett Decl., Ex. A, 16:2-17:2; *see also id.,* 26:5-27:22. Mr. Williamson also testified that the BEATS mark was first used in the summer of 2008 for headphones. *See id.,* 17:17-18:20. Mr. Williamson further testified that Mr. Young came up with the name BEATS, and that the word "beats" has a meaning in the English language that "existed before" Mr. Young chose the BEATS mark. *Id.* Because Mr. Williamson already testified on behalf of Beats regarding the origin and meaning of "beats," as well as the selection of other BEATS-formative marks, there is no need for Merkury to depose Mr. Young about the same issue. Simply put, Merkury is not entitled to a second bite at the apple through a harassing deposition of Mr. Young.

B. Beats Produced Dozens of Documents Related to the Creation of the BEATS Family of Marks.

In addition to the Rule 30(b)(6) deposition testimony, prior to Mr. Williamson's deposition, Beats produced myriad documents related to that issue—including numerous trademark search reports and mock-ups of the proposed BEATS marks. *See* Jarrett Decl., Ex. B, Beats' Responses to Applicant's First Set of Document Requests, dated July 5, 2012, Response to Request No. 17; *see also, e.g.,* Jarrett Decl., Ex. C and ¶ 8. Notably, Merkury did not ask Mr. Williamson about any of those documents. *See* Jarrett Decl., ¶ 9. In any event, because Beats has already provided Merkury with discovery regarding the creation of the BEATS marks, it is not entitled to conduct a deposition of Mr. Young. *See FMR Corp. v. Alliant Partners*, 51 U.S.P.Q.2d 1759, 1761 (T.T.A.B. 1999); *see also Burns*, 2007 WL 1589437, at *3.

C. Beats Responded to Discovery Related to Its Assignment from Pentagram Design, Inc.

Beats also answered Merkury's requests for admission related to Pentagram Design, Inc. ("Pentagram"), which, as publicly-available PTO records show, had assigned its rights and goodwill in a BEATS trademark to Beats in November 2008. *See* Jarrett Decl., ¶ 10 and Ex. D, Beats' Responses to Applicant's First Set of Requests to Admit, dated July 5, 2012, at 4 (Responses to Requests Nos. 7 and 8).

Merkury now misleadingly complains that "Mr. Williamson was not aware of the circumstances under which [Beats] obtained rights to its first BEATS registration," including the assignment from Pentagram. *See* Merkury Br., 2-3. Merkury's complaint is baseless. Beats designated another Rule 30(b)(6) witness, Negin Saberi, to testify about the prosecution history of the so-called first BEATS registration, and objected to Merkury's questioning of Mr. Williamson about that topic for that very reason. *See* Jarrett Decl., Ex. A, Williamson Dep. Tr., 20:15-21. When Merkury later deposed Ms. Saberi, however, counsel for Merkury nevertheless

did not ask her a single question about the Pentagram assignment. *See* Jarrett Decl., ¶¶ 12-13. Merkury's failure to do so does not entitle it to depose Mr. Young.

* * *

In sum, even though evidence about the creation and selection of senior user's mark is not relevant, Merkury has already obtained this information from other sources, and Merkury is not entitled to depose Mr. Young. *See FMR Corp.*, 51 U.S.P.Q.2d at 1761 (denying motion to compel depositions of high-ranking executives); *see also Affinity Labs of Tex. v. Apple Inc.*, No. C 09-4436, 2011 WL 1753982, at *11-15 (N.D. Cal. May 9, 2011); (denying motion to compel the deposition of Steve Jobs because plaintiff had already obtained sufficient testimony from other witnesses); *Baine v. Gen. Motors Corp.*, 141 F.R.D. 332, 334 (M.D. Ala. 1991) (noting that an executive may only be deposed if his "unique personal knowledge [is] truly unique—the deposition would not be allowed where the information could be had through interrogatories, deposition of a designated spokesperson, or deposition testimony of other persons"); *M.A. Porazzi Co. v. The Mormaclark*, 16 F.R.D. 383 (S.D.N.Y. 1951) (precluding the deposition of a vice president because the court found that he could add no additional information beyond that of a lower level employee); *Int'l Fin. Co. v. Bravo Co.*, 64 U.S.P.Q.2d 1597, 2002 WL 1258278, at *9 (T.T.A.B. 2002) (denying motion to compel witness on Rule 30(b)(6) topics about which another witness had already testified).

III. MERKURY'S ATTEMPT TO DEPOSE MR. YOUNG IS PLAINLY INTENDED TO HARASS.

Given that the information Merkury purports to seek from Mr. Young is both irrelevant and has in any case already been obtained through less intrusive means, it is plain that Merkury's only motivation for deposing Mr. Young is to harass Beats and Mr. Young. Both the Board and courts throughout the United States have long recognized the potential for harassment and

burden in depositions of senior executives of large corporations. As the Board has stated, "[v]irtually every court which has addressed the subject has observed that the deposition of any official at the highest level or 'apex' of corporate management creates a tremendous potential for abuse and harassment." *FMR Corp.*, 51 U.S.P.Q.2d at 1761; *see also Affinity Labs*, 2011 WL 1753982, at *15-17; *Baine*, 141 F.R.D. at 335.

A. Mr. Young is An "Apex" Witness.

Mr. Young is clearly an "apex" witness. Mr. Young has been in the music industry for over 30 years. *See* Declaration of Andre Young, dated August 25, 2015, ¶ 2. In 2006, Mr. Young, along with renowned music executive Jimmy Iovine, founded Beats. *See id.*, ¶ 1. Mr. Young continues to hold a leadership position at Beats today, and also has a full-time position at Apple, which acquired Beats in July 2014, where his title is Special Creative. *See id.* In addition to his work for Beats and Apple, Mr. Young also is the CEO of Aftermath Entertainment, the record label he founded in 1996. *See id.,* ¶ 2. Mr. Young was previously the co-owner of, and an artist on, Death Row Records, and has produced albums for and overseen the careers of many recordings artists, including Snoop Dogg, Xzibit, 50 Cent, The Game, and Kendrick Lamar. *See id.* He has won six Grammy awards, including Producer of the Year, and has been nominated for 22 Grammy Awards. *See id.* Mr. Young also is an actor, and has had acting roles in movies such as *Set It Off, The Wash* and *Training Day. See id.* In May 2013, through an endowment from Mr. Iovine and Mr. Young, the University of Southern California created the USC Jimmy Iovine and Andre Young Academy for Arts, Technology and the Business of Innovation, the goal of which is to shape the future by nurturing the talents, passions, leadership and risk-taking of uniquely qualified students who are motivated to explore and create new art forms, technologies, and business models. *See id.*

Mr. Young is a senior executive with unique creative and business talents, and his various duties keep him extremely busy. *See id.*, ¶ 3. For example, in early July 2015, Apple Music launched its new on-demand music subscription service offering access to Apple's complete music library for a monthly fee as well as access to personally curated music playlists from music editors. *See id.*, ¶ 4. Mr. Young is very busy promoting and contributing to the new service, and it is very important for him to focus his efforts on the new service now in the critical early period. *See id.* In addition, on July 4, 2015, Mr. Young debuted his bi-monthly radio show "The Pharmacy" on Apple Music's worldwide radio station Beats 1. *See id.* The hour-long radio show is dedicated to West Coast music and Mr. Young contributes, creates, and features music playlists for the show. *See id.*.

Mr. Young also is working to promote the Universal Pictures movie *Straight Outta Compton,* which opened on August 14, 2015. *See id.*, ¶ 5. The movie is a biopic directed by F. Gary Gray concerning the Compton, California hip hop group N.W.A., of which Mr. Young was a member. *See id.* In addition, on August 7, 2015, inspired by the movie, Mr. Young released his first studio album in over 15 years – "Compton: A Soundtrack" which is available exclusively on Apple Music. *See id.* Furthermore, in order to promote Beats' products, *Straight Outta Compton,* and "Compton: A Soundtrack," Mr. Young collaborated with Beats on the Beats Studio Wireless - Straight Outta Compton limited edition headphones. *See id.*

Given his many duties, a deposition in this case would be a burden that would interfere with Mr. Young's ability to fulfill his many obligations, including to Beats, Apple, and Aftermath Entertainment. *See id.*, ¶ 6.

B. The Information Merkury Seeks from Mr. Young Is Irrelevant and Has Already Been Obtained Through Less Intrusive Means.

To address the risk of harassment and abuse of high-ranking executives like Mr. Young, the Board requires the party seeking a deposition to meet a two-part test. Where, as here, the party seeking to obtain testimony from a high-ranking executive about information that has already been provided to it, the party must show "(1) that there is reasonable indication that the [executive's] deposition is calculated to lead to the discovery of admissible evidence, and (2) that the less intrusive methods of discovery are unsatisfactory, insufficient, or inadequate." *FMR Corp.*, 51 U.S.P.Q.2d at 1761; *see also Burns*, 2007 WL 1589437, at *3 (denying motion to compel deposition of defendant's general counsel and noting that other factors to consider include the "[l]ikelihood of harassment and business disruption. . . ."). Merkury has failed to meet this test.

First, as explained above, information about Beat's intent in adopting its marks is irrelevant. In other words, Mr. Young's deposition is not "calculated to lead to the discovery of admissible evidence." *FMR Corp.*, 51 U.S.P.Q.2d at 1761. *Second*, and also as explained above, Merkury has already obtained all of the information to which it is entitled regarding Beats' "conception, creation and/or adoption of each of [its] Marks" from other sources—namely, the testimony of Rule 30(b)(6) testimony of Mr. Williamson, who has firsthand knowledge of the selection of many BEATS-formative marks, documents produced by Beats, and responses to requests for admission. Merkury also had a full opportunity to question Beats' other Rule 30(b)(6) witness, Ms. Saberi, regarding the Pentagram assignment and the prosecution history of the BEATS marks. Merkury therefore is not entitled to depose Mr. Young. *See FMR Corp.*, 51 U.S.P.Q.2d at 1761; *see also Affinity Labs,* 2011 WL 1753982, at *11-15; *Burns*, 2007 WL 1589437, at *3; *Baine,* 141 F.R.D. at 334; *M.A. Porazzi Co.*, 16 F.R.D. 383; *Int'l Fin. Co.*, 2002

WL 1258278, at *9.

IV. CONCLUSION

For the foregoing reasons, Beats respectfully requests that the Board deny Merkury's motion to compel and grant Beats' request for a protective order preventing the deposition of Mr. Young.

Respectfully submitted,

Date: September 8, 2015

/Dale M. Cendali/
One of the Attorneys for Opposer,
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CERTIFICATE OF SERVICE

I, Bonnie L. Jarrett, an attorney, state that I served a copy of Beats Electronics, LLC's Opposition to Merkury Innovations, LLC's Motion to Compel the Deposition of Andre Young on:

Marc Jason
Amster, Rothstein & Ebenstein LLP
90 Park Avenue
New York, NY 10016

via U.S. Mail on this 8th day of September, 2015.

/Bonnie L. Jarrett/
Bonnie L. Jarrett

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BEATS ELECTRONICS, LLC	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91203192
	)	
MERKURY INNOVATIONS, LLC	)	
	)	
Applicant.	)	

DECLARATION OF BONNIE L. JARRETT IN SUPPORT OF BEATS ELECTRONICS, LLC'S OPPOSITION TO MERKURY INNOVATIONS, LLC'S MOTION TO COMPEL THE DEPOSITION OF ANDRE YOUNG

I, Bonnie L. Jarrett, declare as follows:

1. I am an associate at the law firm of Kirkland & Ellis LLP, counsel of record for Beats Electronics, LLC ("Beats") in the above-captioned proceedings. I submit this declaration in support of and concurrently with Beats' Electronics, LLC's Opposition to Merkury Innovation, LLC's Motion to Compel the Deposition of Andrew Young.

2. I have reviewed the pleadings, correspondence between the parties, written discovery, documents produced by the parties, and deposition transcripts in connection with this matter, as well as publicly-available records from the website of the U.S. Patent & Trademark Office ("PTO").

3. The facts set forth in this declaration are based on my review of the materials described above, as well as on my personal knowledge.

4. Attached hereto as Exhibit A are excerpts from the March 6, 2014 transcript of the deposition Tyler Williamson, Beats' Senior Director for Global Sales and Channel Strategy, who testified on behalf of Beats pursuant to Fed. R. Civ. P. 30(b)(6) and 37 C.F.R. § 2.119(c).

5. Mr. Williamson was designated to testify on behalf of Beats regarding its "conception, creation and/or adoption of each of [its] Marks." Based on my review of the transcript of Mr. Williamson's deposition in this case, counsel for Merkury Innovation, LLC ("Merkury") never objected during the deposition that Mr. Williamson was an inappropriate witness or unprepared to testify on that topic.

6. Attached hereto as Exhibit B is an excerpt from Beats' Responses to Applicant's First Set of Document Requests, dated July 5, 2012.

7. Attached hereto as Exhibit C are mock-ups of the BEATS marks, which are responsive to Merkury's request documents related to Beats' "conception, creation and/or adoption of each of [its] Marks."

8. Beats also produced trademark search reports for BEATS and certain other BEATS-formative marks in response to Merkury's request documents related to Beats' "conception, creation and/or adoption of each of [its] Marks."

9. Based on my review of the transcript of Mr. Williamson's deposition in this case, counsel for Merkury did not ask Mr. Williamson about any of the documents attached hereto as Exhibit C during his deposition, or any of the trademark search reports that Beats produced.

10. Publicly-available PTO records show that Pentagram Design, Inc. had assigned its rights and goodwill in a BEATS trademark to Beats in November 2008.

11. Attached hereto as Exhibit D is an excerpt from Beats' Responses to Applicant's First Set of Requests to Admit, dated July 5, 2012.

12. Mr. Williamson did not testify about that assignment during his deposition because Beats designated another Rule 30(b)(6) witness, Negin Saberi, to testify about the prosecution history of the so-called first BEATS registration.

13. Based on my review of the transcript of Ms. Saberi's deposition in this case, when Merkury later deposed Ms. Saberi, however, counsel for Merkury did not ask her about the Pentagram assignment.

Respectfully submitted,

Date: September 8, 2015

Bonnie L. Jarrett

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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BEATS ELECTRONICS, LLC	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91203192
	)	
MERKURY INNOVATIONS, LLC	)	
	)	
Applicant.	)	

DECLARATION OF ANDRE YOUNG IN SUPPORT OF BEATS ELECTRONICS, LLC'S OPPOSITION TO MERKURY INNOVATIONS, LLC'S MOTION TO COMPEL THE DEPOSITION OF ANDRE YOUNG

I, Andre Young (p/k/a "Dr. Dre"), declare as follows:

1. I am the co-founder of Beats Electronics, LLC ("Beats"), the company I founded in 2006 with renowned music executive Jimmy Iovine. In July 2014, Apple Inc. ("Apple") acquired Beats. Currently, I hold a leadership position within Apple as a full-time employee with the title of Special Creative.

2. I have been in the music industry for over 30 years. In addition to my work for Beats and Apple, I also am the CEO of Aftermath Entertainment, the record label I founded in 1996. I was previously the co-owner of, and an artist on, Death Row Records, and have produced albums for and overseen the careers of many recordings artists, including Snoop Dogg, Xzibit, 50 Cent, The Game, and Kendrick Lamar. I have won six Grammy awards, including Producer of the Year, and I have been nominated for 22 Grammy Awards. I also am an actor, and have had acting roles in movies such as *Set It Off, The Wash* and *Training Day.* In May

2013, through an endowment from Mr. Iovine and myself, the University of Southern California created the USC Jimmy Iovine and Andre Young Academy for Arts, Technology and the Business of Innovation, the goal of which is to shape the future by nurturing the talents, passions, leadership and risk-taking of uniquely qualified students who are motivated to explore and create new art forms, technologies, and business models.

3. My various duties and responsibilities within Apple as well as my work as an artist and producer of other artists and other promotional obligations, keep me extremely busy.

4. In July 2015, Apple Music launched its new on-demand music subscription service offering access to Apple's complete music library for a monthly fee as well as access to personally curated music playlists from music editors. I am very busy promoting and contributing to the new service. It is very important for me to focus my efforts and promote the new service now in this critical early period. For example, when Apple Music launched, I allowed my 1992 G-Funk classic album (*The Chronic*) to be exclusively available on the service. In addition, beginning the week of the launch, I debuted my bi-monthly radio show "The Pharmacy with Dr. Dre" on Apple Music's worldwide radio station Beats 1. The hour-long radio show is dedicated to West Coast music and I also contribute, create, and feature music playlists for the show.

5. On August 14, 2015, the Universal Pictures movie *Straight Outta Compton* opened. The movie is a biopic directed by F. Gary Gray concerning the Compton, California hip hop group N.W.A. of which I was an original founder. I was involved in the filming and production of the movie and am involved in the movie's promotion. In addition, on August 7, 2015, inspired by the movie, I released my first studio album in over 15 years – "Compton: A Soundtrack" which is available exclusively on Apple Music. In order to promote Beats'

products, *Straight Outta Compton,* and "Compton: A Soundtrack," I collaborated with Beats on the Beats Studio Wireless - Straight Outta Compton limited edition headphones.

6. A deposition in this case would be a burden that would interfere with my ability to fulfill my many obligations, including to Beats, Apple and Aftermath Entertainment.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 25 day of August, 2015, at Los Angeles, California.

Andre Young